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December 18, 2000

VIA FEDERAL EXPRESS/EMAIL

Donna Caton, Chief Clerk
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

Re: Illinois Bell Telephone Company Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service; Docket No. 00-0393

Dear Ms. Caton:

Enclosed please find an original and eleven (11) copies of the Reply Brief of @Link Netoworks, Inc., Corecomm Illinois, Inc., and DSLnet Communications, LLC ("CLEC Coalition"). Also enclosed is the CLEC Coalition Statement of Concurrence with the Proposed Orders Submitted by AT&T and Rhythms. And finally, we enclose one diskette containing an electronic copy of the document.

Please file stamp this copy and return it to us in the enclosed self-addressed stamped envelope.

Please call the undersigned if you have any questions. Thank you.

Sincerely,

Eric J. Branfman
Phillip J. Macres
Kevin Hawley

cc: All Active Parties and Staff

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	**)**	
	)	
	)	**Docket No. 00-0393**
Proposed Implementation of High Frequency	**)**	
Portion of Loop (HFPL) / Line Sharing Service	**)**	

REPLY BRIEF OF @LINK NETWORKS, INC.,
CORECOMM ILLINOIS, INC., AND DSLnet COMMUNICATIONS, LLC

@Link Networks, Inc., CoreComm Illinois, Inc., and DSLnet Communications, LLC (collectively referred to as the "CLEC Coalition") hereby respond to the initial post-hearing brief filed by Illinois Bell Telephone Co.'s (hereinafter referred to as "Ameritech-IL" or "Ameritech") on November 17, 2000 in this proceeding *("Ameritech Brief"*).

Ameritech raises little more than red herrings in support of its proposed tariff restrictions on the use by CLECs of the High Frequency Portion of the Loop ("HFPL") for transmission of data and graphics. Chief among Ameritech's contentions is that this Commission: (1) is barred from ordering it to eliminate its proposed restrictions on access to unbundled network elements, because (a) it cannot order Ameritech to file a tariff or (b) otherwise order Ameritech eliminate restrictions on HFPL access *outside* the context of an arbitration under Section 252 of the Act; (2) is bound by the Court of Appeals' decision in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000)(*"IUB III")* to uphold the prices proposed by Ameritech for the provisioning of the HFPL; (3) is barred and/or preempted by the FCC's *Line Sharing*, *UNE Remand* and *Project Pronto Waiver Orders*, as well as Section 261(c) of the Act, from enjoining those restrictions; (4) may not order Ameritech to allow collocation of CLEC line cards at Ameritech's remote terminals because of allegedly insurmountable "operational" issues and the fact that line cards do not

constitute equipment eligible for collocation; and (5) has no authority to require CLECs to offer the same terms and conditions governing OSS access as those ordered by the Commission in its *Rhythms/Covad Arbitration Order*.[1] As explained below, none of these objections rise above the level of mere pretext.

1. This Commission has Plenary Authority to Require Ameritech to Expand Its Tariff to Ensure that It is Just and Reasonable.

Ameritech's overarching contention that this Commission is powerless to review the justness and reasonableness of the limitations of Ameritech's HFPL tariff offering – including Ameritech's refusal to allow the traffic of line sharing data CLECs to traverse Ameritech's fiber-fed Project Pronto DLC network architecture or to permit line "splitting" over UNE-P loops – is wide of the mark for a number of reasons.[2]

First, pursuant to 220 ILCS 5/9-201 and 220 ILCS 5/13-505.6, the Commission, in ensuring the *justness* and *reasonableness* of Ameritech's HFPL tariff offering, has the authority to require that Ameritech's HFPL tariff include additional line sharing unbundling as the CLEC Coalition has properly demonstrated. In any event, having filed the tariff that triggered this proceeding – together with tariff provisions governing access to other UNEs – Ameritech is scarcely entitled now to challenge the Commission's jurisdiction to which it has submitted itself. Ameritech's argument that the court's determinations in *MCI Telecomms. Corp. v. GTE Network*

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[1] *Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues; Rhythms Links, Inc. Petition for Arbitration Pursuant to Section 252(d) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues, Consolidated*, CC Dockets Nos. 00-0312, 00-0313, Arbitration Decision (Ill. I.C.C. August 17, 2000)("*Rhythms/Covad Arbitration Order*"), *reh'g granted and denied in part*, Notice of Commission Action (Ill. I.C.C. Oct. 4, 2000).

[2] *Ameritech Brief* at 4-10.

Northwest, Inc., 41 F. Supp. 2d 1157 (D. Or. 1999) apply here is thus, misplaced as, in that case – and unlike here – GTE had not filed a wholesale UNE tariff in the first place.[3]

Second, the alternatives to generic resolution are manifestly impractical. Repeated negotiations and arbitrations with scores of CLECs are too cumbersome and costly (for the carriers and for the Commission) to use in resolving complex technical issues with far-reaching competitive and economic implications that can better be addressed generically in the context of an industry wide rulemaking,[4] where all interested parties have an opportunity to participate.[5] Since the passage of the 1996 Act, this commission and numerous others have employed generic proceedings to deal with such important industry issues and required that tariffs be filed that reflect such decisions. The piecemeal approach advocated by Ameritech for resolving the issues raised in this proceeding on an individual arbitration-by-arbitration basis would raise barriers to competitive entry and impose unnecessary administrative burdens on state commissions, particularly where, as here, many of the disputed issues have *already* been resolved in a previous arbitration.

2. The Court's Decision in *Iowa Utilities Board III* Has No Impact Upon this Proceeding.

Ameritech's claim that the decision in *IUB III* vacating certain limited aspects of the costing methodology set forth in FCC Rule 51.505(b)(1), resolves several issues in this proceeding is similarly misplaced. Ameritech claims that issues regarding the location of splitters and related cross connect charges that are associated with locating splitters at the least

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[3] *See Ameritech Brief* at 7.

[4] *See Focal Communications Corp. of Illinois, Petition for Arbitration to Establish an Interconnection Agreement with Illinois Bell Tel. Co., d/b/a Ameritech Illinois*, I.C.C. No. 00-0027, at 12 (Ill. I.C.C. May 8, 2000) (deferring to change the Commission's position on reciprocal compensation in an arbitration proceeding and requesting that the staff initiate a generic proceeding that is open to other market participants).

cost most efficient installation point,[6] loop conditioning rates,[7] and unbundling of Ameritech's fiber-fed Project Pronto DLC network architecture are controlled by *IUB III*.[8] Ameritech itself acknowledges in *its own UNE tariff* that the terms and rates are based on the existing FCC rules, which require that decisions be based upon a hypothetical most efficient network.[9] In any event, as Ameritech well knows, the court's decision in *IUB III* was stayed by the court, pending review by the United States Supreme Court, and therefore has no force or effect in this proceeding.[10]

3. Rejection of the Tariff Restrictions Proposed by Ameritech Does Not Constitute a Collateral Attack On Any FCC Orders.

Ameritech also claims that the Commission is restricted from requiring further unbundling in this proceeding because CLECs may only request the FCC to reconsider its unbundling and collocation.[11] This claim cannot be sustained in light of the FCC's consistent statements – in its *UNE Remand Order*, *Line Sharing Orde*r, and *Collocation Reconsideration Order* – explicitly authorizing state commissions to go beyond the unbundling and collocation requirements that the FCC orders.[12] Ameritech's contentions to the contrary notwithstanding, the FCC unbundling and collocation obligations are a floor, *not* a ceiling.

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[5] *Id*.

[6] *Ameritech Brief* at 87.

[7] *Ameritech Brief* at 100.

[8] *Ameritech Brief* at 26.

[9] ILL. C.C. No. 20, Part 19, Section 1, Original Sheet 1.1.

[10] *Iowa Utils. Bd. v. FCC*, No. 96-3321 (and consolidated cases), Order on Partial Stay of Mandate (Sept. 22, 2000) (granting stay of decision to vacate FCC Rule 51.505(b)(1)).

[11] *See Ameritech Brief* at 12 & 27.

[12] *See, e.g.*, 47 C.F.R. 51.317(d); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, FCC 99-238, ¶¶ 153-161 (rel. Nov. 5, 1999) ("*UNE Remand Order*"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, FCC 99-355, ¶ 159

4. This Commission's Authority is Not Constrained by the FCC's *Project Pronto Waiver Order*.

The Commission should further reject Ameritech's specious claim that the FCC's *Project Pronto Waiver Order* somehow prevents the Commission from requiring further unbundling here.[13] As its title suggests, the FCC's order was simply a waiver to the conditions placed on the merger of SBC and Ameritech to alleviate the potential harms to the public interest associated with the merger.[14] The FCC did not exempt Ameritech from the duties explicitly imposed on it under Sections 251 and 252 of the Act. Indeed, the FCC held to the contrary in its *Project Pronto Waiver Order*:

> We stress again that this Order is confined only to the Merger Conditions, and does not constitute any findings or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband offering.[15]

Ameritech's attempt to seek refuge in the FCC's *Project Pronto Waiver Order* is thus contrary to the very language of the *Project Pronto Waiver Order* itself.

5. Section 261(c) of the Act Is Irrelevant to this Proceeding.

Ameritech's attempt to invoke Section 261(c) of the Act - which permits states to impose requirements on *intra*state services where such imposition encourages competition and is not

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(1999) ("*Line Sharing Order*"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297, ¶¶ 5 & 37 (rel. Aug. 10, 2000) ("*Collocation Reconsideration Order*"); *see also Collocation Reconsideration Order* at ¶¶ 11-12.

[13] *See, e.g., Ameritech Brief* at 12-17, 19, 21, 23, 25, etc.

[14] *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5,22,24,25,63,90,95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, FCC 99-279, at ¶ 357 (rel. Oct. 8, 1999)("*SBC/Ameritech Merger Order*"); Second Memorandum Opinion and Order, FCC 00-336 (rel. Sept. 8, 2000) *("Project Pronto Waiver Order*").

[15] *Project Pronto Waiver Order* at ¶ 9; *see also Project Pronto Waiver Order* at ¶ 29.

contrary to the Act or the FCC's implementing regulations - is even more misplaced. Regrettably, Ameritech fails to acknowledge the court's decision in *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 807 (8th Cir. 1997) that Section 261(c) "applies only to those additional state requirements that are not promulgated pursuant to section 251 or any other section in Part II of the Act." Accordingly, Section 261(c) is inapplicable in determining whether additional unbundling requirements are necessary here because the requests for additional unbundling are being made pursuant to Section 251.

Even if Section 261(c) were applicable – and it is not – Ameritech is simply wrong to suggest that the parties to this proceeding have not established that unbundling is necessary as a matter of fact, even though the necessary test pursuant to 251(d)(2)(A) for unbundling is inapplicable.[16] Quite the opposite. In support of their request for HFPL unbundling, CLECs have conclusively demonstrated a competitive need for such unbundled access. Indeed, without such access CLECs will have only the limited alternatives that Ameritech offers through its Wholesale Broadband Service Offering and will not be able to bring competitively dynamic high speed xDSL alternatives and choices to the residential and small business marketplace. Moreover, such wide alternatives of xDSL line sharing options and speeds are necessary so that CLECs can overcome the first to market competitive advantage that Ameritech's advanced services affiliate will have.

6. There Are No Genuine Operational Roadblocks to Collocation of CLEC Line Cards in Ameritech NGDLCs

Ameritech seeks to shield itself from allowing CLECs to collocate their own line cards in the NGDLCs that Ameritech deploys as part of Project Pronto by pointing to "operational"

[16] *See* CLEC Coalition's Brief, as filed on November 17, 2000 in this proceeding, ("*CLEC Coalition Brief*") at 19.

obstacles that it claims prevent it from doing so. The obstacles cited by Ameritech, however, are neither operational in nature nor material. In particular, Ameritech claims that (1) maintaining records of the cards, (2) obtaining, identifying, and creating the service orders needed to install the cards, and (3) ongoing maintenance associated with CLEC ownership of a card would be overly complicated and burdensome.[17] Such burdens are, however, part and parcel of the UNE access and collocation obligations imposed under the Act. Moreover, Ameritech's concerns with the purported burden of serving CLECs cannot be taken seriously where, as here, Ameritech has cheerfully and self-servingly committed more the $6 *Billion* for the privilege of incurring to the burden of inventory management and provisioning associated with installing *its own* line cards in fiber-fed Project Pronto DLC network architecture *for its own account*. In these circumstances, Ameritech is in no position to complain about doing the same for its CLEC customers.

7. Line Cards Constitute Equipment Eligible for Collocation.

Ameritech erroneously argues that the Commission cannot require it to collocate CLEC line cards in its fiber-fed Project Pronto DLC network architecture because the FCC only requires that collocation of complete items of network equipment and that collocation be confined to floor or rack space. Ameritech claims that because the line card is a sub-component of a complete item of equipment and that collocation space can only be obtained as floor or rack space rather than slot space for the line card, it should not be required to collocate line cards.[18] Ameritech again ignores this Commission's clear authority to adopt additional collocation requirements that go beyond the FCC's collocation rules.[19] Accordingly, the Commission can require that Ameritech collocate CLEC line cards and make slots available for CLECs in

[17] *Ameritech Brief* at 42-44.

[18] *Ameritech Brief* at 38-39 & n.22.

Ameritech's fiber-fed Project Pronto DLC network architecture as specifically requested in the *CLEC Coalition Brief*.

8. The "Morgan Stanley" Red Herring

Ameritech wrongly claims that the concerns about the inaccuracies associated with the Morgan Stanley Dean Witter report entitled "The Internet Data Services Report," dated August 11, 1999 have no factual basis.[20] This claim is unfounded. Without question, this forecast does not reflect the heightened demand projections that would derive from the *FCC's Line Sharing Order* that was released nearly four months thereafter, on December 9, 1999. Accordingly, any OSS rates that are derived based upon this forecast would be entirely unjust, unreasonable, and improperly inflated.

9. The "Justified Discriminatory Conduct" Red Herring

Ameritech, as a general matter, wrongly claims that the general CLEC community is not entitled to the same OSS access, provisioning of splitters on a shelf-at-a-time basis, line sharing provisioning intervals, direct access for testing, and acceptance testing[21] that Rhythms and Covad receive as ordered by the Commission in the Rhythms/Covad Arbitration.[22] Essentially, Ameritech proposes to treat other members of the CLEC community less favorably than it will treat Rhythms and Covad, which is patent discrimination. Section 251(c)(3) requires Ameritech to provide "nondiscriminatory access to the network elements on an unbundled basis …on rates,

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[19] *Collocation Reconsideration Order* at ¶¶ 5 & 37; see also *Collocation Reconsideration Order* at ¶¶ 11-12.

[20] *Ameritech Brief* at 115-116.

[21] *See Ameritech Brief* at 63,78, 88, 91, & 95.

[22] *Rhythms/Covad Arbitration Order* at 30.

terms and conditions that are just, reasonable, and nondiscriminatory."[23] Moreover, Ameritech endorses the fact that the Commission has the authority under federal law to ensure that its HFPL tariff "complies…with 251(c)(3) of the Act and the FCC's rules implementing section 251(c)(3)."[24] Therefore, the Commission should not adopt Ameritech's suggestion that it be permitted to treat the general CLEC community less favorably in this tariff than what is currently available to Covad and Rhythms – to do so would be entirely unlawful.

[23] *See also* 47 C.F.R. §§ 51.307, 51.311, 51.313, 51.319(g), 51.319(h)(2), 51.319(h)(7)(i); *Line Sharing Order* at ¶ 172.

[24] *See Ameritech Brief* at 5.

CONCLUSION

For the foregoing reasons, the CLEC Coalition respectfully requests that the Commission poignantly ignore and dismiss the above-referenced red herring arguments asserted by Ameritech. Accordingly, the Commission should not be thwarted by them and should move forward and render a just and reasonable decision that is consistent with the fully articulated and supported requests made in the *CLEC Coalition Brief*.

Respectfully submitted,

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Dated: December 18, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2000, the REPLY BRIEF as well as the STATEMENT OF CONCURRENCE WITH PROPOSED ORDERS SUBMITTED BY AT&T AND RYTHMS of @Link Networks, Inc., Corecomm, Illinois, Inc., and DLSnet Communications, Inc.; Docket No. 00-0393 were sent via First-Class mail, U.S. postage prepaid, to the parties on the attached service list.

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